

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

Housing Affordability Work Group Meeting  
Virginia Housing Commission  
June 26, 2008

### Members Present:

Delegate John Cosgrove, Chair  
Delegate Terrie Suit  
Delegate Rosalyn Dance  
Delegate Robert Hull  
Senator Mary Margaret Whipple  
T.K. Somanath  
Ted McCormack  
Heather Cawthron (for Mark Flynn)  
Connie Chamberlin  
Bill Shelton  
Mike Toalson  
Kelly Harris-Braxton  
Bill Ernst  
Barry Merchant  
Jim Naggles  
Brian Gordon  
Theodore Koebel  
Chip Dicks  
Bob Adams  
Cal Whitehead

### Invited Guests:

Mark Singer  
Lizbeth T. Hayes

### Welcome and Call to Order

- **Delegate Hull** (standing in as chair for Delegate Cosgrove) called the meeting to order at 1:00 p.m.
- The order of the agenda was changed to accommodate the speakers.

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DELEGATE JOHN A. COSGROVE  
DELEGATE ROBERT D. HULL  
DELEGATE DANIEL W. MARSHALL, III  
DELEGATE ROSALYN R. DANCE  
DELEGATE TERRIE L. SUIT

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR MARY MARGARET WHIPPLE

F. GARY GARCZYNSKI  
F. ANDREW HEATWOLE  
T. K. SOMANATH

The first speaker was **Mark Singer**, Virginia Association of Real Estate Inspectors (VAREI) to discuss HB 1483- Certified Home Inspection.

- This bill revises the definition of certified home inspections to include the efficiency of heating and cooling systems and duct work.
- What is “efficiency”? Whose definition are we using? What is included in “duct work”?
  - VAR is concerned about the use of these words.
- This legislation is requesting home inspectors to perform functions outside their scope and pay grade. Inspectors are not equipped to provide efficiency audits.
- What is this legislation trying to achieve, i.e., what is the desired outcome?
  - To approach new construction with an overlay of energy efficiency standards.
  - If this information is required with regard to existing homes, this will create several causes for concern, including:
    - Doubling, or perhaps tripling, the cost of home inspections.
    - Confusion as to the expectation of the homeowner after receiving the efficiency report. Will they be required to spend thousands of dollars on energy efficiency?
  - This legislation better applies to new construction rather than existing construction.
- **Mike Toalson** noted that every new home has to meet energy code requirements, so he did not believe there is a need for this legislation.
- **Delegate Hull** commented that most homebuyers require a home inspection, and contracts are often contingent on these inspections, so the efficiency requirements would conceivably provide an “out” for potential purchasers.
  - **Delegate Suit** added that only within last year have contracts been contingent on passing home inspections; three years ago, sellers wouldn’t accept a contract contingent on inspections.
  - **Mr. Singer** pointed out that even if the contract is not contingent on passing inspections, if these new efficiency standards are put into the definition of “certified home inspection,” then sellers and realtors will have to be made aware of this, and will probably be required to make good-faith disclosures regarding the efficiency of the home’s heating and cooling system.
- **Mike Toalson** stated that he currently provide realtors and prospects with monthly cost of energy, because this is the first question asked of him as an owner; purchasers want to know what the utility costs are, and they want documentation of these costs.
- **Mr. Toalson** then stated that his concern with the legislation is the training that would be required of home inspectors for the system efficiency requirements- who would provide this?
- **Ted Koebel** asked what the normal standard operating procedure is for inspecting HVAC units.
  - **Mr. Singer** stated that there were two home inspectors present at the meeting who could speak on that question more effectively, but first two points:
    - Training situation- if the legislation is enacted, a determination must be made concerning where someone goes to become an energy auditor and how this accreditation is maintained.
    - The VAREI works hard to certify home inspectors and very important criteria are involved; when the additional burden of requiring the

inspectors to conduct home efficiency audits is added, this will drive people away.

- **Mr. Singer** introduced **John Craner**, a home inspector present at the meeting.
- **Mr. Craner** has been an inspector for 10 years, and has been involved with the National Association of Inspectors for six years. He currently chairs the Standards Committee, and is involved locally in inspection education.
  - **Mr. Craner** commented that home inspectors are not educated or equipped to conduct efficiency audits.
    - Inspectors can look for defects in HVAC equipment, but they do not evaluate the efficiency ratings of duct work. This is beyond the scope of any nationally recognized standard, including those that have been around for many years.
    - The standards now require that inspector report that the unit is near the end of its service life.
- **Delegate Hull** asked whether this issue has come up elsewhere in the country.
  - **Mr. Craner** responded that there has been some talk of efficiency audits in New Jersey, but the home inspectors are against it, because this will create liabilities for the inspectors.
  - In Virginia, if this goes into effect, many people will chose to drop out of the volunteer program because they do not want the additional liability.
- **T.K. Somanath** asked whether there is currently a continuing education requirement once the inspectors are certified.
  - **Mr. Craner** replied that there is no continuing education requirement, but inspectors must have a certain number of hours of classroom education and they must produce an affidavit proving that they have completed 100 inspections.
- **Delegate Hull** asked how long the certification lasts.
  - **Mr. Craner** replied that the certifications are renewable every two years.
- **T.K. Somanath** noted that perhaps bigger problems are the current standards and benchmarks required for third-party inspections, because there are holes in this process. When people buy existing homes, inspections are not complete and then the homeowners are left with enormous expenditures in terms updating fixtures, etc.
- **Delegate Hull** asked **Mr. Craner** whether there is a need to strengthen existing requirements.
  - **Mr. Craner** replied that he would be in favor of this, and of requiring continuing education for inspectors.
- **Barry Merchant** asked whether more disclosures are needed for the consumers, so that the public is aware that the inspections are only certifying the functioning of the HVAC systems, and not the efficiency level.
- **Delegate Suit** responded that a strong effort has been made to educate the public about the difference between certified and non-certified inspectors, and also about the disclosures section of the Code.

The next speaker was **Lizbeth T. Hayes**, from the Fair Housing Office, to discuss Fair Housing issues (HB 36 and 1085).

*Note- HB 1085 adds “source of income” to the list of unlawful discriminatory housing practices and HB 36 adds discrimination based on sexual orientation as an unlawful discriminatory housing practice.*

- **Ms. Hayes** first stated that the administration has no official position on either bill.
- **Delegate Cosgrove** asked whether source of income is the same as economic status discrimination.
  - **Ms. Hayes** responded that these are not the same.
- **Delegate Cosgrove** then asked whether other states were looking into these issues.
  - **Ms. Hayes** responded that several states already have source of income and sexual orientation listed as protected classes
- **Delegate Suit** asked **Ms. Hayes** to explain two things:
  - How fair housing works, in particular, how a case works from the complaint to the finding, and
  - What categories are currently protected, and what is the Fair Housing Office’s relationship with the federal government? What happens if the two are not in sync?
- **Ms. Hayes** explained that the Fair Housing Office has an agreement with HUD:
  - If a complaint is filed with HUD, and the complaint is located in Virginia, it is referred to the Fair Housing Office to investigate.
  - HUD will not come in to investigate unless the issue crosses state lines or involves hate crimes, etc.
  - Most complaints are deferred to the Fair Housing Office under cooperative agreement because Virginia law mirrors federal law (except Virginia includes elderliness in its list of unlawful discrimination practices, and the federal government does not).
- Many complaints also come directly to the Fair Housing Office.
  - The office will look at the complaint, and determine the jurisdiction and whether the issue is timely, meaning that it has been no more than a year since the last occurrence.
- **Delegate Cosgrove** asked whether the one year requirement meant one year from the actual act of discrimination or one year from the end of the lease.
  - **Ms. Hayes** responded that it is one year from the actual act, but there are instances of ongoing occurrences, such as sexual discrimination.
- The Fair Housing Office must determine whether it has jurisdiction over the respondent as well as the complainant, and must also ensure that the issue does not fall under any exemption.
- The case is then assigned to a field investigator (there are 4 within the state) or it can be handled administratively (bust most are handled in the field).
- Field investigators contact complainant and ask them to go through everything that transpired under oath.
  - Most complaints deal with rental offices; about 20-25% come from home sales, but most come from property management agencies.
- The field officer will collect all documents related to the allegations, such as the lease agreement, any correspondence, etc.

- The field officer then interviews the respondent, also under oath, about what transpired, and will often get documents from respondents.
- The Fair Housing Office is not an advocate for either side; only fact finders who will then report back to Fair Housing Board or the Real Estate Board.
- An investigative report is prepared, which includes all parties, all witnesses, all documents summarized that were collected, etc.
- This information will be sent to either the Real Estate Board or the Fair Housing Board.
  - The Real Estate Board has jurisdiction over all real estate licensees, etc.
  - All other parties go before the Fair Housing Board.
- The Board is provided with a case analysis worksheet (an internal document) which analyzes the facts, gives the evidence and positions for both sides, and then makes a recommendation to the Board.
- The parties can attend the Board meetings and speak but they may not present any new evidence not introduced during the investigation.
- If the Fair Housing Office does believe that discrimination did occur, then before going to board, it has to go through the Attorney General. The office has designated counsel to help it determine what other evidence is needed.
- If the Board determines that no discrimination took place, then case is closed and the parties are notified within 30 days.
- If the Board finds reasonable cause for the complaint, then the case goes to Alternative Dispute Resolution (ADR):
  - Under the law, the Fair Housing Office is required to mediate all of the cases while they are being investigated. The office is continually trying to resolve case through ADR while the investigation is in process.
  - After the Board's determination of reasonable case, the case is referred back to ADR for one last attempt at resolution.
- The complainant then has 30 days to file suit in a state civil case, but the Attorney General's Office will often try to settle before trial.
  - Most cases settle.
- **Delegate Suit** asked about the funding for the Fair Housing office; because this comes from HUD, what happens if Virginia law is tinkered with so much that it is not the same as (or does not meet the same standards) as the federal law?
  - **Ms. Hayes** explained that HUD comes in yearly and does an assessment of the office to determine that the federal standards are met.
  - The Fair Housing Office must make sure that the law and processes stay substantially equivalent to federal law (the Federal Fair Housing Act); if not, the federal funding can be cut off.
- **Delegate Suit** asked what percentage of funding actually comes from HUD.
  - **Ms. Hayes** replied that HUD pays \$2400 per case. It also provides training and outreach funds, but most money is tied to case processing
  - The Fair Housing Office must investigate 100 cases a year as part of agreement
  - HUD will also start deducting money if the cases last longer than 100 days.
- **Delegate Hull** asked for if **Ms. Hayes** could provide the work group with a breakdown of the different classes protected among the different states.
  - **Ms. Hayes** responded that she would gather this information for the work group.

*(Delegate Cosgrove took over as active chair.)*

The final speaker was **Chip Dicks**, from the Virginia Association of Realtors (VAR), to discuss disclosure requirements (Virginia Code section 55-519).

- There was a need for mandatory disclosures to act as “red flags” for homebuyers.
- The rationale behind this was that all sellers are consumers as well as buyers, and we do not want to impose upon sellers obligations which they cannot perform.
- Created categories of disclosures:
  - 1-structural- related to the condition of the property
  - 2-outside the four corners of the property- adjacent parcels
  - 3-historic district standards that may affect the property
  - 4-resource protection area
  - 5-sex offenders
  - 6-building code violations and zoning violations
- The disclosure statement makes purchasers aware of these categories, but the owner does not make any representations in regard to these (except with regard to building code and zoning violations), and purchasers are advised to exercise due diligence to look into these matters.
- There was confusion in law up until **Delegate Suit’s** bill. Homebuyers received a notice giving red-flag type disclosures, but in the form of a disclaimer, and the seller could sell the property “as is,” leaving no remedy to the buyer for misrepresentations.
  - **Chairman Suit’s** legislation did away with the disclosures and disclaimer as they currently existed, and simply create a disclosure law. A buyer cannot sue seller for misrepresentation if these red flag disclosures are included.
- **Delegate Hull** asked when the new form was finalized.
  - **Mr. Dicks** responded that it was finalized on January 1, 2008.
- **Delegate Hull** then pointed out that the new provisions suggested by the General Assembly (*HB 962, HB 1405, SB 454*) are premature because the new form has been in existence for less than a year.
  - **Mr. Dicks** agreed, and stated that the suggested additional disclosure requirements may be appropriate, but they should also be “red flags.” The owners should not be required to make any representations as to these additional disclosures, but the owner should be made aware of them.
- **Ted McCormack** asked whether there are any federal disclosures requirements.
  - **Mr. Dicks** responded that there are none.
- **Mr. McCormack** then asked about flood disclosures, are there no federal requirements for this?
  - Delegate Suit responded that any federally insured or federally backed loan must have a FEMA approved flood certification; if the property is deemed to be in a flood zone, the lender would know and would mandate the placement of flood insurance. Property owners can still get an elevation survey, and if they can prove that they are not in a flood zone, then the homeowner can waive the flood insurance. However, this is only required for federally backed loans.
- **Mike Toalson** asked if the new disclosure form is available online.
  - Mr. Dicks responded that the form is available on the VAR website.
- **Delegate Cosgrove** asked that **Mr. Dicks** provide a copy of the form at the next meeting.

- **Delegate Cosgrove** asked about underground piping disclosures.
  - **Delegate Suit** replied that this would most likely be an easement through the property, which is still matter of record with deed, so a purchaser can read through the deed and title work.
  - Homeowners are no longer required to get a survey, most title insurance companies will find these easements, and it is the up to the buyer whether or not to get title insurance.
  - **Mr. Dicks** pointed out that the purchaser also will not know where the lines are until the utility provider comes to the property and shows them.
- **Mike Toalson** asked whether such piping is an exemption in title policies.
  - Delegate Suit responded that title insurance will address whether there are easements if there is a survey.

**Delegate Cosgrove** asked for any final comments from the work group, and then from the public. There were no further comments. The meeting adjourned at 2:11 p.m.